

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

ORIGINAL

In re:) Chapter 7
)
STUDENT FINANCE) Case No. 02-11620 (JBR)
CORPORATION,)
)
Debtor.)

Wednesday, October 27, 2004
4:10 p.m.
Courtroom 2A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOEL B. ROSENTHAL
United States Bankruptcy Court Judge

APPEARANCES:

THE BAYARD FIRM
BY: DANIEL ASTIN, ESQ.

-and-

DILWORTH PAXSON, LLP
BY: LAWRENCE G. McMICHAEL, ESQ.
BY: SHERYL AUERBACH, ESQ.
BY: DERRICK DYER, ESQ.

-and-

SCHWARTZ, TOBIA, STANZIALE
SEDLITZ & CAMPISANO
BY: CHARLES A. STANZIALE, JR., ESQ.
BY: JEFFREY TESTA, ESQ.

Counsel for the Trustee

1 APPEARANCES CONTINUED:

2
3 ASHBY & GEDDES
4 BY: WILLIAM BOWDEN, ESQ.

5 -and-

6 SONNENSCHNAIN, NATH & ROSENTHAL
7 BY: PETER WOLFSON, ESQ.
8 BY: ALAN GILBERT, ESQ.
9 BY: JOHN BICKS, ESQ.

10 Counsel for Royal
11 Indemnity Company

12 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
13 BY: JOEL WAITE, ESQ.

14 and

15 PROSKAUER ROSE, LLP
16 BY: MICHAEL FOREMAN, ESQ.

17 Counsel for Wells Fargo/MBIA

18 DEPARTMENT OF JUSTICE
19 BY: DAVID L. BUCHBINDER, ESQ.

20 Counsel for the U.S. Trustee

21 KLEHR, HARRISON, HARVEY
22 BRANZBURG & ELLERS, LLP
23 BY: STEVEN K. KORTANEK, ESQ.

24 Counsel for Commercial
Drivers, et al

1 APPEARANCES CONTINUED:

2
3 DUANE MORRIS, LLP
4 BY: CHRISTOPHER WINTER, ESQ.

5 -and-

6 THELEN REID & PRIEST, LLP
7 BY: VERONICA E. RENDON, ESQ.

8 Counsel for RSM McGladrey,
9 Inc., et al

10 WOLF, BLOCK, SCHORR & SOLIS-COHEN, LLP
11 BY: BARRY M. KLAYMAN, ESQ.
12 BY: DAVID E. STERN, ESQ.

13 Counsel for Transport
14 Training, Inc., et al

1 THE CLERK: All rise.

2 THE COURT: You can be seated,
3 please.

4 THE CLERK: This is the case of
5 Student Finance Corporation. Case Number
6 02-11620.

7 MR. ASTIN: Good afternoon, Your
8 Honor. Daniel Astin of the Bayard Firm on behalf
9 of Charles Stanziale, the Chapter 7 Trustee in
10 the case.

11 Your Honor, what we would like to
12 do, and first, we thank you for allowing us to
13 take some extra time.

14 THE COURT: If you could settle the
15 rest of them, I'll give you more time.

16 MR. ASTIN: Well, we haven't been
17 that lucky. But we think we have it narrowed
18 down, and it shouldn't be too much of a problem.

19 THE COURT: I have nothing to do
20 until 8:19 tonight.

21 MR. ASTIN: Glad to hear that. What
22 we would like to do, Your Honor, is take one
23 matter out of turn.

24 We took to heart, all of us, all the

1 professionals in the case, your admonishment at
2 the last several hearings that we should get in a
3 room, and reach a settlement that makes sense for
4 the case, and is designed to maximize the
5 recovery of creditors.

6 We think we've done that. We'd like
7 to start off with the motion to approve the
8 settlement with Royal. If Your Honor would
9 proceed in that way, I'd turn the podium to Larry
10 McMichael, who's special litigation counsel from
11 the Dilworth firm to present on the motion on
12 behalf of the Trustee.

13 THE COURT: That's fine. Take
14 Number 5 on the agenda first.

15 MR. ASTIN: Thank you, Judge.

16 THE COURT: Mr. McMichael, go ahead.

17 MR. McMICHAEL: Yes. Good
18 afternoon, Your Honor.

19 Lawrence McMichael from Dilworth
20 Paxson, LLP in Philadelphia. We are special
21 litigation counsel to Mr. Stanziale, the Trustee
22 in this case.

23 As Mr. Astin pointed out, we think
24 this is a very important settlement and an

1 important benchmark for this case to move it
2 forward in an orderly manner and an efficient
3 manner. We have a brief presentation on the
4 merits of the settlement, which in accordance
5 with local practice, if it's acceptable to the
6 Court, I would present by proffer and then
7 present Mr. Stanziale for any cross-examination
8 or any questions that the Court may have.

9 THE COURT: That's fine. Go ahead.

10 MR. McMICHAEL: Mr. Stanziale, if
11 testifying in support of the settlement, would
12 first describe his background.

13 He's been practicing law for 38
14 years. He has been a practitioner in the
15 bankruptcy insolvency area for the same 38 years.
16 And he is a panel Trustee in this district, as
17 well as in the District of New Jersey.

18 He has presided as a Trustee in over
19 50 cases that are asset cases, not counting no
20 asset cases where they're routine appointments.
21 Among those 50 cases were several cases of
22 comparable size and magnitude to this case.

23 And if asked for some examples, he
24 would point to the Tower Air case where he served

1 as a Trustee for an operating airline that
2 ultimately liquidated, had international
3 operations, had debt of 350 million or so.

4 He also served as the Chapter 7
5 Trustee for a case, actually a case in which I
6 met him, a case called MUMA Services. M-U-M-A,
7 it's an acronym.

8 It's a case involving the businesses
9 of a gentleman named Thomas Holt, Sr., who
10 operated a steam ship line. The business is --
11 operated a steam ship line providing cargo
12 services, and some significant marine terminal
13 operations. Total debt in their case was, I
14 think, over 500 million.

15 25 Debtors. Very complicated
16 situation.

17 And he feels very comfortable in
18 cases of this size and capable of analyzing the
19 complex issues that are presented to the Trustee.

20 He would also testify that he's had
21 a wide range of experience in bankruptcy cases
22 and other capacities serving as debtor's counsel,
23 Creditors Committee counsel, and counsel for
24 individual creditors.

1 He also represents trustees on
2 occasion. The settlement in this case starts
3 with the litigation.

4 There are two pieces of litigation
5 that the Trustee commenced against Royal. One
6 piece of litigation is here in the Bankruptcy
7 Court, and that case seeks to recover fraudulent
8 transfers on the basis -- the basic theory of
9 that case is that Royal received transfers that
10 were transfers by the Debtor, that actually
11 intended to mask the activity that the Debtor was
12 engaged in.

13 And it's a fairly straight forward
14 548 claim. The second claim is a separate
15 lawsuit commenced prior to Mr. Stanziale's
16 involvement as Trustee in the United States
17 District Court for the District of Delaware.

18 And this case is somewhat more
19 complex. It involves claims for aiding and
20 abetting, for deepening a solvency and related
21 actions.

22 In addition to those two cases, the
23 third sort of piece of the puzzle when looking at
24 the overall relationship between the estate and

1 Royal, is Royal's claim. Royal has filed a proof
2 of claim, later amended to assert claims against
3 SFC, the Debtor, well in excess of \$500 million.

4 The process that Mr. Stanziale
5 employed in analyzing whether a settlement was
6 prudent was to start with the claim of Royal.
7 That has two parts really when you're analyzing
8 the claim, two things that you look at, and two
9 things that Mr. Stanziale will say stand, that he
10 examined with quite a degree of care were the
11 basis on which Royal has a claim against the
12 estate.

13 Putting aside the amount of the
14 claim, what was the basis for there to be a claim
15 against this particular entity, SFC? And what
16 Mr. Stanziale reviewed in that was a series of
17 things.

18 First, written contracts. There are
19 three written contracts called insurance
20 agreements where these are direct written
21 contracts between Royal and Student Finance
22 Corporation signed by a Mr. Gary Hawthorne, an
23 officer of Student Finance Corporation.

24 These contracts contain various

1 terms and provisions, including representations
2 and warranties of Student Finance's financial
3 condition that were relied upon by Royal to issue
4 insurance policies.

5 And these direct contracts account
6 for over \$300 million. Actually under these, I
7 believe, slightly under \$300 million in direct
8 contract claims by Royal against Student Finance
9 Corporation.

10 299 million and change, I think, is
11 the exact number. But the written contract
12 analysis doesn't stop with the insurance
13 agreements.

14 In addition to that, Royal issued a
15 large number of insurance policies. These
16 policies, Mr. Stanziale would say, and these were
17 his words, not mine, these policies were the
18 engine that propelled a vehicle called Student
19 Finance Corporation.

20 It enabled -- they enabled -- the
21 insurance policies enabled Student Finance
22 Corporation to engage in the business activities
23 that it engaged in, and to generate the losses
24 that they ultimately generated.

1 Each and every one of these
2 insurance policies contains a fairly standard
3 subrogation provision. The subrogation provision
4 allows Royal, as the insurer, to assert rights
5 that could have been asserted by any party whose
6 claim Royal pays, including claims of parties
7 like MBIA, and Wells Fargo, who have filed claims
8 in this case; PNC Bank, who has filed a claim in
9 this case.

10 THE COURT: Let me stop you there.
11 Has Royal -- actually something in my memory
12 tells me that Royal hadn't made claims yet. Now,
13 maybe that's changed since I last heard the --

14 MR. McMICHAEL: No, that's an
15 excellent question. I'll be happy to address it.

16 It was on my list, and here's where
17 we are on that. The District Court for the
18 District of Delaware has entered summary judgment
19 against Royal.

20 It has actually entered three
21 summary judgments against Royal, unless the
22 Trustee actually reviewed these. So they're
23 worth mentioning specifically.

24 The first was the MBIA judgment, and

1 the amount of that judgment -- I'm going to use
2 approximate numbers for all of these -- the
3 amount of that judgment was about \$380 million.

4 A second judgment was entered
5 against Royal in favor of PNC Bank in the amount
6 of \$110 million.

7 And a third judgment has been
8 entered against Royal on behalf of Wilmington
9 Trust Company in the amount of \$12 million.

10 Those total 502 million. And what
11 has happened is that upon the entry of those
12 judgments, Royal did two things.

13 One, it took an appeal, which the
14 appeal is pending in the Third Circuit. But,
15 two, and this directly addresses the question
16 that Your Honor just asked, Royal had bonds in
17 those amounts in order to obtain a stay of
18 execution.

19 Otherwise, the judgment creditor
20 could proceed to seize Royal's assets. And that
21 money has been posted.

22 My understanding is there are cash
23 bonds posted by Royal securing 120 percent of the
24 amount of judgment.

1 THE COURT: All right. But let me
2 ask you if Royal succeeds on the appeal --

3 MR. McMICHAEL: Yes, sir.

4 THE COURT: -- and ultimately
5 prevails in its attempt to defend on these
6 contracts, what happens to Royal's claim that you
7 want to allow some 500 some odd thousand -- \$550
8 million in this case?

9 MR. McMICHAEL: Two things will
10 happen, Your Honor. One is -- one is that Royal
11 will be very happy.

12 THE COURT: Well --

13 MR. McMICHAEL: And the second
14 thing --

15 THE COURT: If they're happy, we're
16 all happy. But what happens to the claim?

17 MR. McMICHAEL: And the second thing
18 is that the claim would disappear.

19 Now, what -- this settlement
20 specifically contemplates that eventuality, and
21 there is a provision in Paragraph 5 of the
22 settlement. And it's at the end of Paragraph 5.

23 THE COURT: Which exhibit is that?

24 MR. McMICHAEL: This is Exhibit A to

1 the settlement agreement. I'm sorry, the
2 settlement motion.

3 THE COURT: Well, Item 7, term
4 sheet. What is it?

5 MR. McMICHAEL: Second page of the
6 term sheet, Paragraph 5. And the last sentence
7 of Paragraph 5 says -- of course, the Court -- I
8 don't want to -- -

9 THE COURT: I have it. Fine. Okay.

10 MR. McMICHAEL: Okay. So now, as a
11 practical matter, the settlement makes sense
12 either way, because if Royal's claim disappears
13 by a reason of it prevailing on its appeal in the
14 Third Circuit, what will happen to this estate is
15 that MBIA, PNC, Wells Fargo, Wilmington Trust
16 Company will weigh in with their claims.

17 They have already filed back-up
18 claims, because they are going to stand back and
19 wait --

20 THE COURT: I want to make sure we
21 didn't have a double.

22 MR. McMICHAEL: No. We contemplated
23 that it was discussed and it's provided for.

24 And I don't think we have any

1 problem along those lines.

2 But in any event, to get back to
3 Mr. Stanziale's evaluation of the settlement and
4 why he is here recommending it that it be
5 approved, he looked at the written contracts,
6 both the insurance agreements, and reviewed the
7 insurance policies, and concluded that it was far
8 more likely than not that based on the current
9 state of affairs, Royal would have a contract
10 claim in the full amount that it's claiming
11 against the estate. But his analysis did not
12 stop there.

13 As the Court knows, this case is
14 surrounded by allegations of fraud. And there
15 has been, on other occasions, some evidence
16 previewed to the Court as to the alleged
17 fraudulent activities of the Debtor before it was
18 in bankruptcy.

19 Mr. Stanziale looked at information
20 about those claims, and looked at the corporate
21 structure of SFC and its affiliates, who is
22 involved, and how the transactions worked. And
23 they're quite complex.

24 And concluded that consistent, I

1 think with an observation from the Court, based
2 on just a preview that there was a significant
3 claim.

4 Now, in endorsing a settlement,
5 neither the Trustee nor the Court is required to
6 adjudicate the underlying merits. So
7 Mr. Stanziale did not say, yes, Royal's going to
8 win on this fraud claim.

9 What Mr. Stanziale realized in
10 looking at the volume of this evidence was that
11 Royal had a pretty good case. Might it be
12 defended? Sure.

13 But they had a pretty good case.
14 And that even if -- even if for some reason a
15 direct contract claim didn't work, and we can't
16 see how it wouldn't, they would have the same
17 claims based on the fraud theories.

18 And when I say fraud, I mean to
19 incorporate alter ego, piercing of the corporate
20 veil, all of the related tort notions that come
21 into play in dealing with that sort of claim.

22 So the first conclusion reached by
23 Mr. Stanziale was that Royal had a claim against
24 this estate, and it was not a prudent expenditure

1 of estate resources to engage in warfare over
2 that claim.

3 The next question is how much?
4 We've addressed that, because Your Honor asked me
5 about that.

6 And we have built in a provision in
7 the settlement to deal with reductions in the
8 claim in the event that reductions are in order.

9 So where we are now is with the
10 starting point of why it makes sense for SFC to
11 settle with Royal. The starting point is that
12 Royal is our biggest creditor, and likely to be
13 our biggest creditor in the amount of well over
14 \$500 million.

15 So now Mr. Stanziale goes back to
16 his clients, and he would tell you if he were on
17 the witness stand right now that he has total
18 confidence in his claims, particularly his 548
19 claim, but that he also recognizes that Royal has
20 defenses, and they have made defenses.

21 He has seen and expects to continue
22 to see from Royal vigorous spirited defense,
23 which will result in laborious and expensive
24 litigation from the standpoint of the estate.

1 And when looking at that, which is, by the way,
2 what lawyers and clients always look at when
3 settling case.

4 But when looking at that,
5 Mr. Stanziale reached a very important
6 conclusion. And that was that while academically
7 it might make sense to do that, in the real
8 world, with a 500-plus million dollar claim, the
9 vast bulk of any recovery going into the estate
10 is going to go back out of the estate to Royal.

11 That results in what we now refer to
12 as the recycling effect of that litigation.
13 Because of the recycling effect, where most of
14 what we would get from Royal, we would ultimately
15 have to pay back to Royal.

16 What are we doing it for other than
17 to, you know, enrich our firm as litigation
18 counsel.

19 THE COURT: Well, some might say
20 that's a great idea.

21 MR. McMICHAEL: My partners thought
22 that was a great idea, but Mr. Stanziale
23 concluded otherwise, as is appropriate.

24 The other thing that he considered

1 in looking at whether to settle his claims
2 against Royal was not just that there was this
3 recycling effect and it was going to be a long
4 and expensive litigation, but that this was a
5 real settlement. We're here today looking for a
6 \$4.9 million check from Royal, which they
7 actually won't write tomorrow, because we'll have
8 to let the appeal period run.

9 But they will write soon after this
10 settlement, if it's proved by the Court, \$4.9
11 million, a very major contribution to this
12 estate. It makes a big difference to the ability
13 of the Trustee to pursue other claims that need
14 to be pursued.

15 Now, the settlement agreement
16 provides -- I want to highlight this, because
17 parties who are in court may have questions about
18 it. The settlement agreement provides that
19 there's the payments of \$4.9 million. It also
20 provides in Paragraph 2 that one of the things
21 that Royal gets is an administrative claim for
22 \$1.9 million.

23 Let me pause for a moment and talk
24 about the rationale for that. All settlements,

1 as I know this Court is keenly aware of, all
2 settlements ultimately involve negotiated
3 numbers. There is no absolute right number and
4 no absolute right number.

5 I mean, could 4.9 million have been
6 4.8 million, or 5.1 million? Sure. But what we
7 did in the negotiating process, what
8 Mr. Stanziale did was he was looking at the
9 underlying merits of his claim.

10 He was looking at the interest of
11 other creditors in this estate. And there are
12 quite a few other creditors. Royal is big, but
13 they're not alone.

14 The other creditors amount to,
15 including Mr. Yao's claim, which we intend to
16 object to, amount to over 12 million.

17 THE COURT: If you take Yao out?

18 MR. McMICHAEL: If you take Yao out,
19 you're down to about four million. But that's
20 not all.

21 Four million, and that is in
22 non-trucking school claims. We then have the
23 trucking school claims, and they are in the
24 neighborhood of 60 million.

1 We have, and we'll have substantial
2 disputes with a lot of the trucking schools. And
3 we don't know what the ultimate allowed amount of
4 those claims will be.

5 But there will be claims there.
6 There will be claims.

7 You know, I think that in this case,
8 you are going to have 10, 15, maybe \$20 million
9 worth of claims in addition to the claims of
10 Royal. So in looking at the settlement amount,
11 what Mr. Stanziale really said was Royal is doing
12 two things for us.

13 One, they're settling claims, saving
14 us the expense, and putting money into the
15 estate.

16 But two, they're providing sort of
17 seed capital for the Trustee to be able to
18 litigate a lot of other lawsuits that need to be
19 litigated, Chapter 5 avoidance action, and a
20 variety of other claims.

21 And if the estate is successful in
22 generating recoveries for the benefit of all
23 creditors from those claims, it's only fair that
24 Royal get some amount back on a priority basis.

1 And that's how the \$1.9 million administrative
2 claim was negotiated.

3 So that brings us to the fundamental
4 conclusion, unfortunately not quite the end of
5 the presentation, but the fundamental conclusion
6 that when weighing all of the factors that
7 trustees and Courts look in determining the
8 merits of a settlement, Mr. Stanziale reached the
9 very firm conclusion that this settlement was in
10 the interest of the estate.

11 And he has asked us to come and
12 vigorously ask the Court to approve it. He's
13 done a little bit more than that, though.

14 And I'm going to address an issue
15 that has been raised in the objection that was
16 filed. Part of the settlement involves what we
17 call the cooperation clause.

18 The cooperation clause, if Your
19 Honor wants to take a quick look at it, it is
20 Paragraph 7. It's a long paragraph, but it's
21 Paragraph 7 of the term sheet.

22 The cooperation clause is there for
23 a number of important reasons. It recognizes
24 that Royal, who has been involved in matters

1 related to Student Finance far longer than the
2 Trustee has, with its resources accumulated a
3 massive amount of information. It has done a lot
4 of analysis.

5 And it is generally in possession of
6 information that is very useful for the Trustee
7 and will save us a lot of work if we have access
8 to it. And what we said to Royal, and what Royal
9 has said to us is if we settle, we both have a
10 mutual interest in pursuing the other claims that
11 need to be pursued. And there's some examples of
12 those claims given in Paragraph 7.

13 Therefore, we want to agree with
14 each other and make part of the settlement that
15 we're going to cooperate, and we're going to
16 participate with each other. That will save the
17 expense, save the estate money by way of legal
18 fees and expenses. And it will allow the estate
19 to make use of the enormous resources and
20 information developed by Royal in their
21 investigation and in their prosecution of claims.

22 We have been criticized by saying
23 that we're making Royal into the Trustee in this
24 case. And Mr. Stanziale, if he were on the

1 witness stand, and he will be in a minute, would
2 tell this Court that nothing could be further
3 from the truth.

4 He is the Trustee. He's been the
5 Trustee in a lot of cases and a lot of big cases.

6 He understands what his role is. He
7 understands that he's still the Trustee.
8 Agreeing to cooperate with a litigant that has
9 mutual interest is not ceasing your power as a
10 Trustee. It's simply a common sense
11 business-like way of dealing with a complex
12 litigation environment, much that will whittle
13 down to everybody's benefit.

14 Mr. Stanziale retains 100 percent of
15 his powers, his duties, and his fiduciary
16 obligations as the Trustee.

17 You now --

18 THE COURT: Well, let me ask you
19 because --

20 MR. McMICHAEL: Yes, sir.

21 THE COURT: You suggest in one of
22 the objections that if the Trustee elects not to
23 sue a party that Royal determines to sue, then
24 Royal can bring an action on behalf of the estate

1 against that defendant.

2 MR. McMICHAEL: Yes, sir.

3 THE COURT: Now, how do you deal
4 with the issue of if Royal already has a claim, a
5 separate claim against that potential defendant
6 or the cause of action against the estate, in
7 that situation, what happens?

8 MR. McMICHAEL: The estate's claim
9 goes first. We had a specific discussion about
10 that, and the estate's -- the estate gets the
11 first bite of the apple, whether it's my law
12 firm, or Mr. Stanziale's law firm or --

13 THE COURT: I'm not worried about
14 which law firm handles it, as much as I am
15 worried about the priority of those claims that
16 are being prosecuted by potentially Royal by two
17 different capacities, if you will.

18 MR. McMICHAEL: Yes.

19 THE COURT: One on their own behalf,
20 and one as a -- as state representative of some
21 sort.

22 MR. McMICHAEL: Yes, sir. I
23 understand the question.

24 That is actually addressed, if I

1 could find the language quickly. It is in the
2 bottom of the last sentence of Paragraph 7.

3 This is the important point. If
4 Royal takes over a claim because the Trustee
5 determines not to pursue it, and we've allowed
6 for this as Your Honor has pointed out, the claim
7 is prosecuted by Royal in the name of the estate.

8 It's still the estate's claim. We
9 have not sold the claim or assigned the claim.

10 THE COURT: But they're prosecuting
11 it at their empowered level? They have their own
12 as well.

13 MR. McMICHAEL: They may have their
14 own as well, but Royal has said, and it is our
15 understanding, and as part of this deal that the
16 estate claim will go first. The estate claim
17 will be litigated.

18 THE COURT: Does that say that?

19 MR. McMICHAEL: I don't know that it
20 is that clear. And if it's not, we can certainly
21 make that part of any order approving the
22 settlement.

23 THE COURT: Okay. Go ahead.

24 MR. McMICHAEL: But that is the

1 understanding that we have with Royal, if that --
2 if that occurs. And by the way, it will occur in
3 at least one case.

4 THE COURT: I understand. That's
5 why I'm asking the question.

6 MR. McMICHAEL: Yes, the CTI case.

7 THE COURT: Which case may be -- in
8 my mind, may be different, but that's not
9 important.

10 MR. McMICHAEL: But the right point
11 is that Royal will be acting for the estate,
12 standing estate and prosecuting the claim.

13 The money will come in through the
14 estate, and pass through the estate, and take
15 priority over Royal, separate and independent
16 claims against the same defendant, if it has one.

17 MR. WOLFSON: Your Honor, may I just
18 address that point or --

19 MR. McMICHAEL: This is Mr. Wolfson.
20 Mr. Wolfson is my friend from New York who
21 represents Royal, and I want to note that --

22 THE COURT: We've met. Yeah.

23 Let's try to get this point. Why
24 don't you come up and let's deal with this point.

1 MR. WOLFSON: This issue may be
2 ameliorated somewhere at the request of the U.S.
3 Trustee. I think we have agreed that if we were
4 to pursue any claim under Paragraph 7, it would
5 be with prior Court approval. So that, A, if the
6 Trustee determines not to pursue it, and we're
7 going to pursue it, we would have prior Court
8 approval.

9 And in any event, Your Honor, the
10 issue really, from our standpoint, I'm not sure I
11 would necessarily agree, because I don't know all
12 of the other litigation that's out there that we
13 can just pursue one litigation before the other.

14 But our understanding, and the
15 premise of this settlement is that we are
16 possibly 90-percent plus of the estate. And,
17 therefore, one of the things that we were very
18 sensitive to is we didn't want to just buy claims
19 outright, because we didn't think that was fair
20 to the other, you know, legitimate creditors that
21 are out there.

22 We're prepared to prosecute these
23 actions, either to fund the estate prosecuting
24 it, or to fund it ourselves if we prosecute it,

1 and share any and all proceeds with everyone in
2 the estate.

3 Whether we recover money at the
4 90-percent mark from some of these claimants, if
5 we have a similar lawsuit -- classic example
6 would be there is a pending lawsuit with CDI, DDI
7 I think that's pending in Tennessee.

8 Whether we recover money from them
9 individually in their capacity there, or whether
10 we recover it here, we get a hundred percent of
11 one pot, 90 percent of the other. We certainly
12 would come to the Court before we --

13 THE COURT: I just wanted to make
14 sure you focus on it.

15 MR. WOLFSON: We intend to do this
16 fairly.

17 THE COURT: If there's going to be a
18 motion for each case, if you do -- each type of
19 case that you pursue, then we can make sure that
20 that's in the orders. There I was concerned
21 because you imagine they have, I guess, somewhat
22 different causes of action against some of these
23 people, because of the -- their relationship is
24 different with the Debtor.

1 MR. WOLFSON: Indeed, they're
2 entirely different. The only actions that we
3 would be pursuing if the Trustee decides not to
4 pursue it would be an action of the estate.

5 That is, there may be similar fact
6 patterns, but it's a totally different recovery,
7 totally different. Right.

8 The only real issue would be not
9 whether we pursue and get a judgment in our
10 individual capacity. First, the issue is whether
11 we seek to enforce it enforcing our own
12 individual rights.

13 Would we therefore -- would we
14 thereby be depriving the estate of its ability to
15 recover when it gets a judgment on it? And what
16 we would suggest to resolve that issue is that we
17 certainly would agree that with respect to the
18 recovery of anything, we're not going to have a
19 race to the courthouse to see that we can beat
20 the Trustee on individuals.

21 And, in fact, we have agreed as part
22 of this settlement agreement to keep the Trustee
23 fully informed of what's going on in those other
24 lawsuits. So I don't want to agree and modify

1 this term sheet to say how we're going to proceed
2 in individual actions.

3 But we do have -- we will represent
4 to the Court that we will not seek to use a
5 judgment that we obtained or in order to deprive
6 the estate of the ability to recover on any
7 judgment that it would obtain.

8 THE COURT: All right. Thank you.

9 All right. Mr. McMichael, let's
10 keep going.

11 MR. KORTANEK: Your Honor, Steve
12 Kortanek with Klehr Harrison. We represent the
13 CDI schools.

14 And I just -- I was listening, but I
15 didn't hear counsel assure us that they will file
16 a separate motion as to any lawsuit, including
17 the actions against the CDI schools, because
18 that's -- that's what's set forth in the papers
19 as they stand now.

20 THE COURT: We'll get to deal with
21 CDI when we get to CDI. Let's keep going with
22 the settlement.

23 MR. KORTANEK: Thank you.

24 MR. McMICHAEL: In our effort to try

1 to clean up as many stray issues as we have,
2 I've -- by the way, I have concluded the basic
3 rationale for the Trustee's recommendation to
4 this Court for --

5 THE COURT: Let me ask you, because
6 you skipped over one of the lawsuits. You
7 didn't, and I don't -- it's one that I don't know
8 much about.

9 You talked about the analysis of the
10 proof of claim. You talked about the 548 action.

11 There apparently is another lawsuit
12 that you suggested was brought against Royal.
13 Again, I'm not sure quite by whom, the aiding and
14 abetting.

15 MR. McMICHAEL: Yes, sir. I don't
16 know who the plaintiff is in that one.

17 I didn't mean to skip that. The
18 plaintiff is the Estate of Student Finance
19 Corporation. That case was commenced by the
20 Chapter 11 Debtor and his counsel.

21 It was dismissed with leave. It was
22 amended prior to the appointment of Mr. Stanziale
23 as initially Chapter 11 Trustee, later Chapter 7
24 Trustee.

1 The -- one of the first things the
2 Trustee did was to review that case, look at it,
3 and file an amended pleading, which has been
4 done. And that is the -- what I'm calling the
5 aiding and abetting claim.

6 That claim is more complex and more
7 factually intensive than the 548 claim. And
8 accordingly, more difficult to prosecute.

9 It is equally vigorously defended.
10 It seeks essentially parallel relief, although
11 arguably under the aiding and abetting theory,
12 the amount of damages could be larger. We're
13 still focusing on Royal's role in the underlying
14 transactions.

15 And it doesn't provide really a
16 separate basis for us to say that, you know, gee,
17 we'd rather sue them on that theory. I mean, if
18 we're litigating them, against them, we'll be
19 litigating on each of these. And if we're
20 settling, we're settling all claims.

21 The fact is that you have the same
22 exact recycling effect of any recovery. That's
23 the ultimate problem.

24 It's a problem.

1 THE COURT: That doesn't affect if
2 other people have direct claims against Royal.

3 MR. McMICHAEL: This has no affect
4 on that, on the fraud theory, or the -- I don't
5 know if they exist.

6 Those are undisturbed.

7 I don't -- I'm not aware of such
8 claims. If they existed, they would not be
9 affected by this settlement.

10 This is a settlement with the
11 Trustee, not with anybody else.

12 THE COURT: Okay.

13 MR. McMICHAEL: Okay. So, as I was
14 saying, that the totality of circumstances and
15 factors that were reviewed and analyzed by the
16 Trustee lead him to the conclusion that this is a
17 very good and favorable settlement for the
18 estate.

19 It positioned the estate to pay a
20 dividend to the creditors to pursue claims that
21 need to be pursued, and to do so quickly,
22 efficiently and much less expensively than if we
23 were on the other side of the table from Royal.

24 We have made a few adjustments to

1 this deal since it was filed. All of them are, I
2 would describe, as technical.

3 But let me describe what each one of
4 them is. And we had prepared an amended order to
5 reflect some of them, although some of the
6 adjustments were made three minutes before Your
7 Honor came on the bench.

8 We don't quite have an amended order
9 that contemplates --

10 THE COURT: That is fine. Why don't
11 you outline on the record --

12 MR. McMICHAEL: I will tell you
13 exactly what they are.

14 The first is in Paragraph 5. In the
15 term sheet, there is a reference to a secured
16 claim by Royal.

17 We have provided in the order, first
18 of all, the concept. The concept is that the
19 amount of the secured claim identifies the
20 amount, the dollar amount of a claim that Royal
21 has against the estate as to which there is
22 collateral or security. It is not an ultimate
23 determination of secured status, because we have
24 not valued the collateral.

1 So the first object is to -- just to
2 identify what the starting number is. And that
3 number has changed, and that's what I wanted to
4 point out to the Court.

5 The number that appears in Paragraph
6 5 is \$45,418 and change. In the order approving
7 the settlement, we have changed that number to
8 just under \$16 million.

9 And the reason for that adjustment
10 was that when we went back with Royal and
11 reviewed the exact basis of the claims, both we
12 and Royal concluded that there was an overlap
13 between the 45 and the 516. And we have pushed
14 that overlap into the unsecured portion of the
15 claim.

16 The order approving the settlement
17 will provide, however, that the ultimately
18 allowed secured claim will, of course, be limited
19 to the value of the collateral when that's
20 determined.

21 And that won't be now. That will be
22 determined whenever the collateral is ultimately
23 sold.

24 The second adjustment that we have

1 made is to address a concern raised this
2 afternoon by the U.S. Trustee's office. And that
3 is a concern that involves the last sentence,
4 actually I guess the last two sentences of
5 Paragraph 2 of the term sheet.

6 First, let me state the general
7 proposition that in agreeing to the term sheet,
8 neither Royal nor the Trustee intended to change
9 any otherwise applicable principles that would,
10 for instance, require Court approval before
11 counsel could withdraw from a case, or that would
12 require a filing of fee applications for
13 professionals seeking to be paid for the estate.

14 Those are all routine bankruptcy
15 overlays that we assume continue to exist. The
16 Trustee, the U.S. Trustee's office believed that
17 the specific language used at the bottom of
18 Paragraph 2 may collide in some respect with
19 those principles, and that was certainly not an
20 intended effect.

21 So what we have done to resolve the
22 claim raised by the U.S. Trustee is to delete at
23 the very, very end of Paragraph 2 the last words
24 which read, or undertake other matters on behalf

1 of the estate. That will come out.

2 And we have further inserted in the
3 sentence that the exercise of the rights that are
4 described here are subject to prior approval of
5 the Court, which will be sought when, and if,
6 these things come into play.

7 In short, we're not seeking to short
8 circuit any processes here. We're just creating
9 the framework of our deal with Royal.

10 The final point, and this is the
11 last thing I will say before asking if anyone has
12 questions for Mr. Stanziale, the final point is
13 that any party, whether it's professionals
14 retained by the Trustee, or whether it's Royal,
15 any party seeking compensation from the estate
16 will, of course, file fee apps and be subject to
17 that process. And that was intended.

18 There's nothing in here that we
19 think is inconsistent with that. But to the
20 extent that any party, particularly the U.S.
21 Trustee's office has a concern about it, I want
22 to make it clear on the record that that is our
23 intention and understanding of this settlement.

24 Unless Your Honor has further

1 questions, which I'd be happy to answer if you
2 do.

3 THE COURT: Well, do you want to
4 address the few things that were in the objection
5 while you're up?

6 MR. McMICHAEL: Sure. I can do
7 that.

8 I've addressed one of them, which is
9 are we exceeding our power as Trustee to Royal.
10 The answer is we're not.

11 This does not have that effect. It
12 does not have that intent.

13 THE COURT: Let's take the CDI one.
14 What's the rush?

15 You don't even have a fully flushed
16 out settlement agreement deal.

17 MR. McMICHAEL: That was okay. That
18 objection, I understand exactly the objection.
19 The objection is we don't intend to have a fully
20 flushed out settlement agreement.

21 THE COURT: So the term sheet is the
22 agreement.

23 MR. McMICHAEL: The term sheet is
24 the agreement. Mr. Wolfson and I have dealt with

1 each other in the past. We've known each other
2 for 18 or 19 years.

3 THE COURT: Has this case been going
4 on that long?

5 MR. McMICHAEL: No, it hasn't.
6 There was one even worse than that out in the
7 West Coast that we were involved in for 10 years.

8 And I think that we are both
9 believers in economy of words. Could we spend
10 more money of the estate and take this document
11 and create a 50-page document agreement with a
12 lot of reps and warranties?

13 THE COURT: You answered my
14 question.

15 MR. McMICHAEL: We could do that.
16 We don't think it's necessary.

17 In fact, the settlement agreement
18 says that. By the way, in the very last
19 paragraph, Paragraph 14 of the term sheet
20 expressly says, This is the settlement. And we
21 don't want to create any further documents and
22 make it more complicated than it needs to be.

23 The major legal objection, as I read
24 CDI papers, relies on the well-known Cybergeneics

1 case in the Third Circuit. And I don't know if
2 Your Honor has had an opportunity to visit
3 Cybergenics' issue in the First Circuit.

4 But the short story of that case is
5 that a Debtor, Trustee for a Debtor, I think,
6 decided not to -- actually it was just a Debtor,
7 decided not to pursue certain Chapter 5 avoidance
8 claims.

9 The Creditors Committee was upset
10 with that decision and asked the Court to empower
11 it to pursue the claim. The Court said, Yes, go
12 ahead and pursue the claims. There was an
13 appeal.

14 The District Court said, You can't
15 do that based on the Harford Underwriters
16 decision from the United States Supreme Court.
17 It says in the statute, The Trustee may, that
18 cannot be read to mean the Trustee and the
19 Creditors Committee may.

20 The District Court, the District
21 Court reversed the Bankruptcy Court, said, You
22 can't do that. They went to the Third Circuit.

23 A panel of the Third Circuit agreed
24 with the District Court. The case was taken on

1 Bonk, because it generally created a lot of fuss.

2 A lot of people -- you know a lot of
3 crying, gnashing of teeth, all those things out
4 there in the bankruptcy world. So the Third
5 Circuit convened on Bonk, considered it, and
6 reversed -- the panel reversed the District
7 Court, and agreed that it could be done.

8 THE COURT: Now, does -- what does
9 that have to do with this case?

10 MR. McMICHAEL: We would submit very
11 little. This is not a case where the Trustee or
12 a Debtor in dereliction of its duties is not
13 pursuing claims.

14 This is not a case where somebody
15 else is coming into court saying let us sue.
16 This is a case where parties, the Trustee and
17 Royal, with the exact same litigation interest
18 and objectives to maximize the recovery in this
19 estate, have agreed that under certain
20 circumstances it may make more sense, and it may
21 be economically more efficient for Royal to
22 actively litigate the claim as opposed to the
23 Trustee.

24 And as we discussed in response to

1 an earlier question of the Court, if that
2 happens, the claim will be prosecuted in the name
3 of the estate. The recovery will go into the
4 estate.

5 This is a situation unlike
6 Cybergenics where someone is asking to be
7 invested with authority that belongs to the
8 Trustee. This is a situation where the Trustee
9 is agreeing by contract to allow certain other
10 parties, certain other parties under certain
11 circumstances to pursue a claim.

12 Even if the Court were to say, Nice
13 distinction, Mr. McMichael, but I don't buy it,
14 and I think Cybergenics has to be really studied,
15 if the Court were to say that, the short answer
16 to the objection is that Cybergenics was decided
17 our way.

18 At the end of the day, the United
19 States Supreme Court was deprived of its
20 opportunity to decide whether the Third Circuit
21 on Bonk was correct or not. Because after
22 granting seriatum, the parties to Cybergenics
23 decided -- chose to settle.

24 So what we have is a Third Circuit

1 on Bonk decision under -- reviewed by the United
2 States Supreme Court, which holds that other
3 parties can, under certain circumstances, assert
4 rights that are given to the Trustee.

5 And that is all we're doing.
6 Actually less than that here, as I've said
7 earlier.

8 I think without trying to preempt
9 Mr. Kortanek, I think that is what we read to be
10 the heart of the objections that they filed.

11 THE COURT: We'll give you an
12 opportunity after he's had a chance to speak.

13 Anyone else want to be heard in
14 favor of the motion before I -- well, first, go
15 ahead.

16 I'll hear you, and then I'll deal
17 with the evidentiary issue. Go ahead.

18 MR. WOLFSON: Your Honor, if I may
19 just from here.

20 THE COURT: Can you hear him from
21 there?

22 THE REPORTER: If he speaks up.

23 MR. WOLFSON: Well, I'll move up.

24 I'll be very brief, Your Honor. I

1 don't want to duplicate that which Mr. McMichael
2 indicated.

3 THE COURT: Good.

4 MR. WOLFSON: One comment that I
5 would have with respect to the Cybergenics case,
6 and to the quick response to the objections, you
7 know, the notion that we did not sign the term
8 sheet, this is the agreement we're prepared to go
9 forward with subject to Court approval.

10 That the term sheet hasn't been
11 signed, we don't think is a valid objection.
12 Cybergenics is the case used by CDI to object to
13 the so-called delegation of responsibilities.

14 And as I understood the argument,
15 maybe a little bit differently than Mr.
16 McMichael, was -- the argument was that
17 Cybergenics says the Creditor Committee could do
18 it. It didn't say that, and individual creditors
19 could it.

20 What Cybergenics made very clear
21 throughout itself is that, in fact, Cybergenics
22 cited the cases time and time again indicating
23 that individual creditors can, with Court
24 approval, pursue actions that belong to the

1 estate.

2 It went on about that. And what
3 Cybergenics was struggling with was finding the
4 authority that the Code gave to individual
5 creditors under 503(b) to bring actions with the
6 approval of the Court to find some authority to
7 give it to a Creditors Committee.

8 And, ultimately, concluded that when
9 you took a look at Section 503(b), which gave the
10 right to an individual creditor to pursue an
11 action on the estate, with Court approval, either
12 where the Trustee refuses to bring that action,
13 or where the Trustee consents to allow someone
14 else to do it, the Court struggled with it and
15 concluded ultimately three uses, various
16 provisions under Section 1109 and elsewhere in
17 1103 that, in fact, the Creditors Committee would
18 be vested with the same authority to bring a
19 derivative-type action on behalf of the estate,
20 that the code clearly gave to individual
21 creditors.

22 So we don't think that there's
23 really any real dispute that Cybergenics does, in
24 fact, support and cite cases, indeed, that

1 support this sort of a resolution.

2 The analog also that we keep coming
3 back to, which I think the Cybergeneics Court
4 recognized is that the Trustee can sell
5 preference claims, formulation transfers, and
6 other claims of the estate, and somebody could
7 pursue it. We had the option and could have
8 negotiated a deal where, rather than bring an
9 action on behalf of the estate and share all the
10 proceeds with everybody, we could have just
11 bought it for the same price, candidly, and just
12 kept all the assets for ourselves.

13 But we thought it was appropriate,
14 given our size, to share the recoveries on a pro
15 rata basis with all of the other creditors.

16 This was -- well, I'm sure
17 Mr. Stanziale would also indicate in his
18 testimony, that this was a very vigorously
19 pursued negotiation. It is an arm's length
20 resolution that took many weeks, if not longer,
21 to negotiate and finalize.

22 THE COURT: Thank you.

23 I will accept your proffer of
24 Mr. Stanziale. But is there anybody who wants

1 the opportunity to cross-examine Mr. Stanziale?

2 MR. KORTANEK: Yes, Your Honor.

3 Steve Kortanek on behalf of CDI schools.

4 We would like to cross cross-examine
5 Mr. Stanziale.

6 THE COURT: Are there others that
7 want to examine Mr. Stanziale as well?

8 All right. I'll get to you.

9 I just wanted to make sure that's
10 why you were moving around.

11 MR. KORTANEK: Your Honor, while
12 Mr. Stanziale is taking the stand, I would ask
13 that Your Honor exclude counsel to Royal or any
14 business representatives of Royal essentially for
15 the same reason that Your Honor excluded our
16 clients at the last hearing.

17 Because when the Trustee is
18 testifying, necessarily about benefits of his
19 claims and weaknesses of his claims, I think for
20 the benefit of the estate and for creditors, that
21 the target of that litigation shouldn't be in the
22 courtroom.

23 I understand the same motion was
24 made last month, and we did not oppose that

1 request. So I think the same thing ought to
2 apply.

3 THE COURT: I don't recall that
4 motion.

5 MS. AUERBACH: Your Honor, we had
6 filed normal written motion to file the response
7 of the Trustee, support the DDI CDI settlement
8 under seal, and that was consented to by CDI,
9 DDI.

10 And then in accordance with that,
11 the courtroom was sealed.

12 THE COURT: All right. I just
13 didn't remember.

14 MS. AUERBACH: But that was
15 something that was requested by the Trustee and
16 agreed to by CDI, DDI. And that is not the same
17 as this situation today.

18 The Trustee is not requesting that
19 this be filed under seal. And Royal has not
20 agreed to it.

21 MR. KORTANEK: Your Honor, the one
22 difference --

23 THE COURT: Go ahead, counsel.

24 MR. KORTANEK: The difference is we

1 didn't oppose putting that response under seal
2 when the Trustee asked us that. But we were not
3 asked in advance of the hearing whether we
4 consented to having the courtroom sealed.

5 I appeared in court just as the
6 hearing began, and I was asked for counsel by the
7 Trustee to leave under the understanding that
8 Your Honor had sealed the courtroom.

9 So we simply think that that's fair
10 in this situation. It doesn't prejudice Royal.

11 THE COURT: Well, let me just --
12 first, let's make sure we all understand the
13 standard in which I have to measure this. This
14 is not a very high standard.

15 The Trustee has to -- you can sit
16 down, sir. This is not a very high standard, as
17 I understand it.

18 Do you disagree?

19 MR. KORTANEK: It's the lowest range
20 of reasonableness, Your Honor. I do not
21 disagree.

22 THE COURT: Okay. Does Royal
23 object?

24 MR. WOLFSON: We do object to being

1 excluded, Your Honor.

2 THE COURT: And the basis of your
3 objection is, other than you don't want to miss
4 anything?

5 What --

6 MR. WOLFSON: Well, there's no
7 basis. As indicated, this is a settlement that
8 the Trustee is proposing, that we're supporting.
9 The Trustee did not ask to submit anything that
10 it has to say under seal.

11 It has disclosed to the Court the
12 strengths and weaknesses of its position.

13 THE COURT: I agree. All right.
14 Your request is denied.

15 MR. KORTANEK: Thank you, Your
16 Honor.

17 THE COURT: Let's swear the witness.

18 THE CLERK: Raise your right hand
19 and state your full name for the record.

20 THE WITNESS: Charles Stanziale, Jr.

21 CHARLES STANZIALE, JR., ESQ.,
22 the deponent herein, having first
23 been duly sworn on oath, was
24 examined and testified as follows:

1 BY MR. KORTANEK:

2 Q. Mr. Stanziale, did the -- did the U.S.
3 Trustee evaluate any grounds to subordinate
4 Royal's claims against the case?

5 THE COURT: You just said the U.S.
6 Trustee.

7 MR. KORTANEK: To you as Trustee.
8 Excuse me.

9 THE WITNESS: I took that into
10 consideration in my own -- in my own right. I
11 had some discussions with counsel.

12 I didn't believe that there was any
13 basis to subordinate the claims of Royal to any
14 other -- any of the other creditors.

15 The answer to your question is
16 clearly, yes, I did consider it. And I
17 concluded -- it was not -- it was not something
18 that I would pursue in a settlement.

19 BY MR. KORTANEK:

20 Q. Is that a complete description of your due
21 diligence in that respect? In other words, did
22 you review any documents in that connection?

23 A. Well, all of the documents that I
24 reviewed, as a result of reviewing those

1 documents, I concluded that they had a legitimate
2 claim, a valid claim in this case.

3 I saw no reason to seek their
4 subordination. I made no judgment as to their
5 defalcation or anything that they had done wrong
6 in this particular situation.

7 And further, I think it's the
8 Court's -- the Court would make that
9 determination as to whether they had done
10 anything improper that would justify
11 subordination of their claim.

12 Q. Now, when you say you didn't believe they
13 had done anything improper, you did, sir,
14 authorize the filing of the aiding and abetting
15 complaint just enabled this year?

16 A. That's correct.

17 Q. And that complaint alleged, did it not,
18 that Royal aided and abetted a breach of
19 fiduciary duty?

20 A. That's an allegation, sir.

21 Q. Okay. But the complaint was filed under
22 your auspices and with a good faith belief that
23 that claim had merit?

24 A. Yes.

1 Q. Okay. Sir, did you evaluate with counsel
2 whether if that claim were successful, if that
3 would constitute or give rise to even a potential
4 claim for equitable subordination of Royal's
5 claim?

6 A. If that -- if that claim were pursued, no
7 settlement had been entered into, and we were --
8 and I, as Trustee, were successful in pursuit of
9 that litigation, certainly, I would have sought
10 collection of the -- of the funds.

11 I'm not sure whether I would -- at
12 what point I would look to equitable
13 subordination. The matter of that claim hadn't
14 been determined at that time.

15 Q. So is it fair to say, then, that there
16 really was no evaluation specifically as to
17 whether equitable subordination could occur if
18 you won that lawsuit?

19 A. No, I don't -- I think that's correct. I
20 did not give that specific thought.

21 Q. Did you or your counsel interview any
22 potential witnesses as to the Royal -- the claims
23 against Royal starting there?

24 A. At the benefit of -- I had the benefit of

1 voluminous discovery that had taken place, both
2 prior to and subsequent to my appointment. I had
3 had among those persons, and I'm not saying that
4 that was the basis of the conclusion to start a
5 lawsuit, but I certainly interviewed Mr. Yao who
6 was -- who is a principal in this case.

7 I discussed the matter with
8 Mr. Yao's counsel. I certainly discussed it with
9 my own counsel.

10 I read the depositions and the
11 testimony taken under 2004, specifically as to
12 any other individuals that I had spoken to with
13 regard to bringing the lawsuits in light of the
14 United States District Court or the Bankruptcy
15 Court.

16 I think I made that determination
17 primarily based upon the information that I read
18 and recalled from previous testimony.

19 Q. When did the settlement discussions that
20 resulted in this settlement begin in earnest?

21 A. The settlement discussions began when we
22 went to -- I have to estimate. I can't give you
23 specific dates.

24 I would say these discussions have

1 been carried on for the past two months.

2 Q. It's a correct characterization, is it
3 not, that in your view, a significant benefit of
4 this settlement at this particular time is
5 providing funding to commence actions within the
6 next few weeks?

7 A. It is a benefit. I won't characterize the
8 quality of that.

9 Q. What can you tell the Court about the bid
10 and, if you will, as to the settlement
11 discussions, bidding as who started the
12 negotiations and who made the first offer of a
13 number, which got us to the 4.9 that we have
14 today?

15 MR. McMICHAEL: Objection.

16 THE COURT: Basis?

17 MR. McMICHAEL: I think it's
18 privileged settlement discussions. I don't think
19 it's something that is -- just because we are
20 seeking approval, we don't waive the normal rule
21 408 privilege that covers settlement objection,
22 settlement discussions, unless it's some -- you
23 know, unless it's tied to something.

24 Even if it were, I don't think he

1 could get into it.

2 MR. KORTANEK: Your Honor, I
3 understand Rule 408. I think this is different,
4 because they're asking Your Honor to review the
5 settlement and render a decision as to whether
6 it's a good faith product of arm's length
7 negotiations.

8 THE COURT: That's fine. But we
9 know the number they ended up at.

10 I think we can presume, without
11 knowing the numbers, that one started higher, one
12 started lower. They ended up somewhere in
13 between based on their evaluation of it.

14 But I don't know why the numbers are
15 even relevant.

16 MR. KORTANEK: We could get to it a
17 different way.

18 THE COURT: Well, get to it if you
19 think so -- if you think it's relevant. But
20 right now, it's a standing objection.

21 MR. KORTANEK: All right.

22 BY MR. KORTANEK:

23 Q. How would you characterize how many back
24 and forth numerical offers were made, if you can

1 testify to that?

2 A. I would estimate that there were four or
3 five, maybe more, maybe ten.

4 Q. Now, your counsel characterized your
5 testimony and the agreement that, as far as the
6 delegation of causes of action, I think he
7 characterized it as a cooperation clause.

8 But in your understanding, what the
9 agreement will do is, in fact, delegate complete
10 authority as to certain causes of action so that
11 Royal can pursue them on behalf of the estate?

12 A. That is not my understanding.

13 Q. Then explain to me what your understanding
14 is.

15 A. My understanding is not only as the intent
16 of the agreement, but my definition of
17 cooperation suggests that Royal can provide
18 assistance to the estate or to me, as the estate,
19 in pursuing certain important litigation that
20 will benefit all the creditors of this estate.

21 In cooperation, in my mind, means
22 that I will have access to information that
23 they've determined relevant -- excuse me. They
24 will have access to information that my counsel

1 and I have subsequently determined to be valid
2 and important information.

3 And that we -- I shall pursue
4 certain litigation as Trustee of the estate of
5 Student Finance Corporation.

6 And to the extent of strategy, to
7 the extent of justification for, or possibly
8 settlement, et cetera, the agreement is to confer
9 with Royal with my having the ultimate say as to
10 whether that is a justifiable settlement or not.
11 That's my definition of cooperation.

12 Q. Sir, can you point to where it says in the
13 agreement, or just from your recollection whether
14 the agreement expressly gives you the final say
15 over how Royal prosecutes estate litigation?

16 A. There -- there is a clause, and I can't
17 remember the paragraph. But I remember that
18 there is a clause that sets forth that the
19 responsibility of litigation is my responsibility
20 and at such time --

21 MR. KORTANEK: May I approach, Your
22 Honor?

23 THE WITNESS: May I finish my answer?

24 THE COURT: Keep going. No.

1 Go back.

2 MR. KORTANEK: All right.

3 THE COURT: He's in the middle of an
4 answer.

5 Go ahead, Mr. Stanziale.

6 THE WITNESS: And at such time that
7 I feel that, we do -- the matter should be
8 handled in a particular manner, I will pursue it
9 in that regard.

10 And to the extent that Royal
11 disagrees that Royal will have to guarantee, in
12 the case of a settlement, no less than an amount
13 that I've negotiated.

14 At the time, I wouldn't be in a
15 position to know under the circumstances.

16 THE COURT: Don't talk him out of
17 it, Mr. Stanziale. Next question.

18 BY MR. KORTANEK:

19 Q. Mr. Stanziale, you still believed, in your
20 judgment, when you entered into the settlement
21 agreement with Commercial Driver Institute and
22 its affiliates about two months ago; correct?

23 A. Yes. Repeat that question, sir.

24 THE COURT: You want the question